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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

NATIONAL ENTERPRISES, INC. et al.,

Plaintiffs and Appellants,

v.

CITY OF SAN DIEGO,

Defendant and Respondent.

E046937

(Super.Ct.No. 730011)

**ORDER MODIFYING OPINION  
AND DENYING REHEARING**

[NO CHANGE IN JUDGEMENT]

**THE COURT**

Respondent's petition for rehearing is denied. The opinion filed in this matter on June 7, 2010, is modified as follows:

1. On page 18, the subheading "National's Government Code Claim Substantially Complies With the Requirements of Section 910" is deleted. The following subheading is inserted in its place:

The Complaint Can Be Amended to Allege Substantial  
Compliance With Section 910

2. On page 18, the final sentence of the first paragraph following the above subheading beginning with "We disagree . . ." is deleted. The following text is inserted in its place:

We disagree; substantial compliance is all that is required.

3. On page 20, the last two sentences of the first paragraph (which begins at the bottom of page 19), including footnote 13 and the case citation, are deleted. The following text is inserted in their place:

We cannot say as a matter of law that this information is not sufficient to allow the city to investigate and evaluate National's claims. Because that is all that is required to constitute substantial compliance (*Stockett, supra*, 34 Cal.4th at pp. 446, 449), an allegation that National's claim substantially complied with section 910 is sufficient to withstand a demurrer. Consequently, on remand, plaintiffs may amend the complaint to allege substantial compliance. (*City of Stockton, supra*, 42 Cal.4th at p. 746.)

All remaining footnotes in the opinion are renumbered accordingly.

4. The following text is inserted at page 20, immediately following the above text:

Plaintiffs also contend that the City waived any claim of insufficiency because it failed to issue a notice of insufficiency after it received what plaintiffs assert was an amended claim. Plaintiffs state that five days after National submitted its claim, the City issued a notice of insufficiency, stating that the claim failed to state a date of occurrence. In response, National submitted a letter which included a copy of the original claim and provided additional information as to the date of occurrence. Because the City did not then issue another notice of insufficiency, plaintiffs contend, the City waived any date defect.

The requirement for a notice of insufficiency is triggered by a "claim as presented." (§ 910.8.) A "claim as presented" is a claim which "is defective in that it fails to comply substantially with Government Code sections 910 and 910.2, but nonetheless puts the public entity on notice that the claimant is attempting to file a valid claim and that litigation will result if it is not paid or otherwise resolved." (*Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 202.) We see nothing in the statutory scheme which requires a public entity to issue repeated notices of insufficiency in order to maintain its right to assert the defect as a defense in subsequent litigation if the claimant

fails to correct the defect after receiving the first notice of insufficiency. Accordingly, even if we assume that the letter National sent in response to the notice of insufficiency was an amended claim, the City was not required to issue a second notice of insufficiency in order to preserve its defense that the amended claim failed to correct the defect in the original claim.

The opinion remains otherwise unchanged. This modification does not effect a change in the judgment.

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/s/ McKinster  
Acting P.J.

We concur:

/s/ Richli  
J.

/s/ King  
J.